

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY
OCTOBER TERM, 1904: 1905

No. 1489.

⁴
No. 23, SPECIAL CALENDAR.

SAMUEL GASSENHEIMER, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

SAMUEL GASSENHEIMER, Plaintiff in Error, }
vs. } No. 1489.
THE DISTRICT OF COLUMBIA.

a In the Police Court of the District of Columbia, October Term, 1904.

DISTRICT OF COLUMBIA }
vs. } No. 260,935. Information for Violation
SAMUEL GASSENHEIMER. } of Police Regulations.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (*Information.*)

In the Police Court of the District of Columbia, October Term,
A. D. 1904.

THE DISTRICT OF COLUMBIA, ss:

Andrew B. Duvall, Esq., corporation counsel, by James L. Pugh, Jr., Esq., assistant corporation counsel, who for the District of Columbia, prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed, and complains that Samuel Gassenheimer, late of the District of Columbia aforesaid, on the 22nd day of September, in the year A. D. nineteen hundred and four, in the District of Columbia aforesaid, and in the city of Washington, on "E" street, northwest, being then and there the proprietor of a certain licensed automobile for the conveyance of passengers, and, as such, did unnecessarily obstruct the free passageway of said street, hinder and delay traffic thereon by allowing the said automobile to remain on said street in front of the Hotel Lawrence for a period of two hours; contrary to and in violation of the police regulations of the District of Columbia, and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
Corporation Counsel,
By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared A. R. Lamb, this 6th day of October, A. D. 1904, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

JOSEPH HARPER,
Deputy Clerk of the Police Court of the District of Columbia.

2 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA }
vs. } No. 260,935.
SAMUEL GASSENHEIMER. }

Be it remembered at the trial of this cause, which came on for hearing on the 11th day of October, A. D. 1904 before the presiding justice, which said hearing, after the testimony hereinafter set forth was given, was continued by said justice, to the 14th day of October, A. D. 1904, the District, to prove the issues joined on its part, produced as a witness Inspector LAMB, who testified as follows:

"I saw Mr. Gassenheimer's automobile standing in front of his hotel for two hours on September 22 without engagement. I then hired it and moved away in it and used it for an hour and paid for it.

Q. Who did you hire it from? A. Mr. Gassenheimer. This automobile is licensed; licensed public vehicle."

Thereupon the District rested.

And thereupon the defendant was produced as a witness and he testified as follows:

"Q. I believe you had an automobile out in front of your place?
A. Yes, sir.

Q. Have you an automobile stable? A. Yes, sir.

Q. Why do you keep the automobile in front of the place?

3 A. Have it there for the guests of the hotel; have an office there. Have one man employed just to attend to that business in the office.

Q. Do you order from the stable as well as keep the vehicle on the street for the guests? A. Yes, sir. Have a telephone in the stable and a telephone in the hotel for the automobile business.

Q. Are the persons who are in charge of the automobiles permitted to hire them to anybody at all? A. No, sir, nobody. Not to hire them except through the clerk inside.

Q. Do these automobiles obstruct the street or affect anybody's free passage of the street? A. No, sir, it is a hackstand in the night-time. Let the hacks stand there.

Q. You mean the hacks for the theatre? A. The hacks stand in front of there in the night time now since the theatres are opened.

Mr. PUGH:

Q. You rent these automobiles to anybody that comes to the hotel? That is, have an office there and clerk there? A. Rent them from a stable; have a stable and clerk in the office. We telephone over if you want an automobile because we have the sign up there, "Automobile office," but our stable is on Fourteenth street.

Mr. PUGH:

Q. Anyone can drop in your hotel and hire an automobile, can't they? A. Yes, sir, they can go inside; a clerk there for that purpose."

Thereupon the defendant rested. This was all of the evidence produced in the case.

Thereupon the defendant moved the court to instruct itself as matter of law that the defendant was not guilty of the charge mentioned in the information, which said charge was that of unnecessarily obstructing the street, hindering or delaying the free passage of vehicles thereon, on the ground that the said record showed no unnecessary obstruction of said street, or the hindering or delaying the free passage of vehicles thereon, and on the further ground that the said defendant had a right for the purposes of conducting his business as set out in the evidence, to use the street in a reasonable manner; but the court overruled said motion, to which ruling counsel for the defendant excepted, which said exception was duly noted at the time the same was taken, and notice thereof given of an intention to apply to the Court of Appeals for a writ of error, said exception being signed this 15th day of October, A. D. 1904, *nunc pro tunc*.

L. C. STRIDER, [SEAL.]
Acting Judge Police Court.

5 (Copy of Docket Entries.)

In the Police Court of the District of Columbia, October Term,
A. D. 1904.

DISTRICT OF COLUMBIA	}	No. 260,935. Information for Violation of Police Regulations.
vs.		
SAMUEL GASSENHEIMER.		

Defendant arraigned Tuesday, October 11, 1904. Plea: Not guilty. Continued to October 14, 1904.

October 14, 1904.—Judgment: Guilty. Sentence: To pay a fine of five dollars, and in default, to be committed to the workhouse for the term of fifteen days.

Exceptions taken to the rulings of the court on matters of law and notice given by the defendant in open court at the time of the sev-

eral rulings of his intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of fifty dollars entered into on writ of error to the Court of Appeals of the District of Columbia, upon the condition that, in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court of the District of Columbia and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Josie Gassenheimer, surety.

October 15, 1904.—Bill of exceptions filed, settled and signed.

October 18, 1904.—Writ of error received from the Court of Appeals of the District of Columbia.

6 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

I, N. C. Harper, deputy clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 5 inclusive, to be true copies of originals in cause No. 260,935 wherein The District of Columbia is plaintiff and Samuel Gassenheimer defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington in said District, this 21st day — October, A. D. 1904.

[Seal Police Court of District of Columbia.]

N. C. HARPER,
Deputy Clerk Police Court, Dist. of Columbia,
Acting in the Absence of the Clerk.

7 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable L. C. Strider, acting judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Samuel Gassenheimer, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected,

and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 18th day of October, in the year of our Lord one thousand nine hundred and four.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

R. H. ALVEY,
*Chief Justice of the Court of Appeals of
the District of Columbia.*

Endorsed on cover: District of Columbia police court. No. 1489. Samuel Gassenheimer, plaintiff in error, vs. The District of Columbia. Court of Appeals, District of Columbia. Filed Oct. 21, 1904. Henry W. Hodges, clerk.

Court of Appeals, District of Columbia.

OCTOBER TERM, 1904.

No. 1489.

No. 23, SPECIAL CALENDAR.

SAMUEL GASSENHEIMER, PLAINTIFF IN ERROR,

v.

THE DISTRICT OF COLUMBIA.

Brief for Defendant in Error.

STATEMENT OF THE CASE.

The plaintiff in error is the proprietor of a hotel, the St. Lawrence, on E street between Thirteenth and Fourteenth northwest. He was tried in the police court and convicted under an information charging him with unnecessarily obstructing the streets by permitting his automobile to stand in front of the hotel for a period of two hours. The auto-

mobile is a licensed public vehicle, and its use is not confined to the guests of the hotel, but it may be hired by any one of the public, as it was hired in this case by the inspector.

ARGUMENT.

The contention of the plaintiff in error is that he may use the street adjoining the hotel premises as a cab stand, although the use of the carriage or hack is not confined to the guests of the hotel. In other words, he says he is entitled to the same use of the street as a private citizen using his own carriage, or a merchant using the street in the ordinary manner in the conduct of his business, or a hotel proprietor using the street for carriages intended for the exclusive use of the hotel guests.

The court is virtually asked to extend the doctrine laid down in the case of *The Willard Hotel Co. v. The District of Columbia*, XXXII Wash. Law Rep., 163, to include hotel cabs which are used by the public generally, but this is the case to which the court said the use could not be extended :

“A very different case might be presented if the hotel company, instead of restricting the use of its vehicles to the guests of the hotel, stationed them upon the streets for hire to any and all persons who might desire to use them. Then there would undoubtedly be the maintenance of a public cab stand in an unauthorized place, and an unwarranted use of the public highway for purposes forbidden by the municipal ordinances.”

It may be argued, and perhaps with some truth, that this statement was not necessary to the decision of that case ; but

the question is not whether it is pertinent, but whether it is good law, and this, it seems, cannot well be questioned.

27 Eng. & Am. Ency., 167.

Whether the quarrel of the plaintiff in error is with the extract quoted or with the decision itself we are not advised. We might admit, for the sake of the argument, that the point decided was wrongly decided, but that would not help the position of the plaintiff in error. Assume it to be admitted, then, that a hotel proprietor has *not* the right to use the street adjoining his hotel as a stand for his cabs designed for the exclusive use of guests of the hotel. It certainly cannot be argued from this that the plaintiff in error has the right to use the street in front of his hotel as a stand for cabs to be used by the public; but the contention is that not only has the hotel proprietor the right to use the street as a stand for cabs intended for the exclusive use of hotel guests, but that he has the right to use it as a stand for cabs designed for general public use—that is, he has the same right to use the street as a merchant would have in the usual conduct of his business, or that a citizen would have for a private carriage. This argument, however, proves too much, for it proves that any one would have the right to use the street in front of his premises as a stand for cabs or carriages, whether the use be private in the ordinary sense or whether the use be in the conduct of a business, and whether, too, that business be the carrying of passengers of the guests of the particular premises or the public at large. This could only mean that the use of the street could not be regulated as to these matters; but it has been conceded that the use of the streets can be so regulated, or at least that

has been decided so many times that this use can be regulated, that the matter is no longer open to argument.

However, it is not admitted, as a matter of law, that the Willard Hotel case was wrongly decided, and as the court below followed that case its decision was correct and should be affirmed.

Respectfully submitted.

A. B. DUVALL,

F. H. STEPHENS,

Attorneys for the Defendant in Error.

